

TANZANIA / JUDGMENT

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26 September 1976

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IN THE HIGH COURT OF TANZANIA AT IRINGA ORIGINAL JURISDICTION
(DODOMA DISTRICT) CRIMINAL SESSIONS CASE NO. 31 OF 1977 THE REPUBLIC VERSUS
ANDOLELYE D/O SAPULA CHARGE Murder c/s 196 of the Penal Code J1JDG1 TENT . SAMATTA,
J. - The accused, ANDOLELYE D/O SAPULA, stands charged with murder, contrary to section 196
of the Penal Code. It is alleged by the Republic that on or about the 26th day of September, 1976, in
Iringa Region, the accused murdered her daughter, one Grace d/o Luncho. The accused has
protested her innocence. Happily, a number of facts in this case are not in dispute. • It is not in
dispute that Grace d/o Luncho is dead and that she met her death on the 26th day of September,
1976. It is not in dispute, too, that the girl met her death in the hands of the accused person. The
main issue in this case is: In, what mental condition was the accused when she terminated the
life of Grace Luncho? I hold and find as a fact that all the undisputed facts have been
proved beyond reasonable doubt. The case for the prosecution may briefly be described as follows.
On the 5th day of December, 1971, the accused got married to one Yohane Luncho, IW.2.
Their marriage was blessed with a number 1 of children, including Grace Luncho, the deceased
in this case. From the wedding day to sometime in 1975 the accused behaved as a normal
person. According to her husband, however, in 1976 she started behaving very
abnormally. She spoke very little and sometimes she used to sing unnecessarily.

- 2 - According to the witness 7 later it became worse than that. At times the accused used to
walk at night and talk unintelligible things without any reason whatsoever. At times she used
to harass passers-by without any reason whatsoever. She used to pull some grass from the
ground saying it was medicine. Yohane Luncho found the situation demanding some
treatment; he therefore took the accused to her parents' home. He left her in the hands of
her uncle who was also a traditional healer. A week later, however, the accused returned to
the matrimonial home. According to her husband, her condition was considerably good. But
early in September, 1976, her condition deteriorated and she started to do abnormal things
as she had been doing before. The husband went on to tell this court that on the morning of
26th September, 1976; he left the matrimonial home for a walk. While he was still having
the walk, he got information that her daughter, Grace, was dead. He rushed to the river in
the village. There he saw many people, including the accused. He also saw the dead body of
his dear daughter, Grace. Later, at their matrimonial home, he asked the accused as to what
had happened to the deceased. The accused replied that it was she who had dropped the

deceased in the river, The accused added that she did that act when her mind was disturbed. Another witness for the prosecution was an old man called Samwel Mwakyusa. He told this court that one day in September, 1976, he went to Wikichi village; After he had crossed Ichunilo river and after he had walked a distance of one mile from the river he heard an alarm originating from the river. He went there. There he saw the accused person. On the ground was lying a dead body of a child. The accused told the witness that she had dropped the child in the river because her mind by then was disturbed. The she accused also said that it was the person who had removed the child ... /3

- 3 - :from the river. The dead body was conveyed to the Kibena Government Hospital where one Doctor Mwakajila performed post-mortem on it. The doctor's report was produced in this court under section 275 of the Criminal Procedure Code. According to that report, there were several minor wounds on the body and the skull was fractured. The cause of death of the deceased is given in the report as shock following head injury. On 29th September, 1976, the same doctor examined the accused. He found her to be mentally disturbed. He accordingly recommended her to be further observed at the mental hospital. Following the order made by my learned brother Chipeta, the accused was sent to Isanga Institution for medical observation. The report made by the doctor who examined her there was produced in this court. In that report the doctor expressed the opinion that the accused most likely was of unsound mind at the time she committed the alleged offence. That briefly was the case for the prosecution: an The accused made a sworn statement and called no witness. Her statement consists of three sentences. I can quote it without making this judgment unduly long. It reads as follows: "When I killed. I was mentally disturbed. I was insane. That is all." Upon evidence before me, I am satisfied that it was the accused person who caused the death of Grace. I have come to that conclusion after taking into consideration the evidence before me and particularly the evidence of Samwel Mwakyusa, which I entirely accept. According to the evidence of that old man, the accused admitted to have dropped Grace who was then aged about two into the river. It is not of little significance that the accused confessed to have done so to her husband, whose evidence I accept. ... /4 4 - Upon the evidence before this court, it is safe to conclude, in my opinion, that Grace Luncho sustained the head injury when the accused dropped her in the river, It follows that the accused is the one who caused the death of Grace. Is the accused criminally responsible for that death? That is the question I proceed to answer. The lady and gentlemen assessors were of the unanimous opinion that the accused person is not guilty because at the time she killed Grace she (the accused) was legally insane. I respectfully agree with that view. Not even a shadow of motive is given in this case why the accused should suddenly decide to kill her own daughter, The evidence before this court clearly shows, in my judgment, that the accused was legally insane at the time she killed her daughter. The evidence of the accused's husband, Luncho Yohohe, establishes that from the beginning of 1976 the accused person was behaving in a very abnormal manner. There are also the two reports from Dr. Mwakajila and the Isanga psychiatrist, Doctor Mwakajila found the accused to be insane, According to the psychiatrist, the accused was most likely

insane at the time she killed Grnct3~, I accept both reports, In my view the conduct of the accused prior to the death of Grace shows nothing but that the accused was legally insane, I accept the accused assertion that she killed Grace when she was mentally disturbec,. . Like the Lndy 1:1nd Gentleman Assessors, I find the accused not guilty of murder~ I find that she killed Groce but she did so when she was legally insane. ..5 5 -, Acco:rc:l:ingly, I make a special finding to the effect that the accused did the act charged but by reason of insanity is not guilty of murder of Groce Lunoch. I order that r-1 certified copy of the proceedings of ihis. cnse·be submitted to the Minister responsible for legal affairs~ In the meantime, the accused is to be kept in custody as a criminal lunatic. 1~ --~:77',.~,,. -~;. . __·---4:,f'!..·c----r C~_l ·~·" - - B. A. SAMATTA . JUDGE. Right of appeal explained to the accusqd. The Lady and Gentle- men Assessors are thonkecl nnd clischargecl~ t JUDGE

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